

NEW ENGLAND POWER COMPANY

Petition for Authorization and Approval of:

- (1) Extension of the Authority to Issue Not Exceeding \$300 Million of New Long Term Debt, Which May Be in the Form of Bonds, Notes, or Debentures
and
- (2) Long Term Debt Pursuant to One or More Loan Agreements or Supplemental Loan Agreements in Connection with the Refunding of \$38.5 million of Pollution Control Revenue Bonds

Order Approving Issuance of \$38.5 million of Pollution Control Revenue Refunding Bonds

O R D E R N O. 23,557

September 25, 2000

APPEARANCES: Gallagher, Callahan and Gartrell, PA by Seth L. Shortlidge, Esq. and Geraldine M. Zipser, Esq. on behalf of New England Power Company; the Office of Consumer Advocate by Michael W. Holmes, Esq. on behalf of Residential Utility Consumers; and Larry S. Eckhaus on behalf of the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On July 14, 2000, New England Power Company¹(NEP or the Company), a subsidiary of National Grid USA, a registered public utility holding company system, filed a Petition for Authorization and Approval (Petition)(1) to extend the time to issue new long term debt from December 31, 2000 to December 31,

2004; to increase the amount of long term debt to be issued from an amount not exceeding \$100 million to an amount not exceeding \$300 million which may be in the form of bonds, notes, or debentures (Long Term Debt); and to change the interest rate ceiling from 250 basis points above the rate for 30-year Treasury Bills to 11% per annum; and (2) to issue 15-year, \$38.5 million in long term debt, at a fixed interest rate not exceeding 8% or a variable interest rate not exceeding 11%, pursuant to one or more loan agreements or supplemental loan agreements in connection with the refunding of certain short term Pollution Control Revenue Bonds with long term Pollution Control Revenue Refunding Bonds (PCRRBs). An extensive procedural history, and initial positions of the Parties and Staff may be found in our Order No. 23,552 (September 11, 2000) approving interventions and procedural schedule in this proceeding.

II. COMMISSION ANALYSIS

In our Order of Notice dated, August 2, 2000, we indicated that the filing raised, *inter alia*, certain issues related to the PCRRBs: (1) whether the issues related to the issuance of the Long Term Debt and long-term PCRRBs should be considered separately; (2) whether issuance of the long-term PCRRBs, and the proposed terms and conditions, is consistent

with the public good pursuant to RSA 369:1; and (2) whether the issuance of short-term PCRRBs in September, 1999 required Commission approval. In addition to those issues, we must consider whether the proposed divestiture of the Millstone 3 Nuclear Generating Station (Millstone) to Dominion Resources, Inc., and the Contract Termination Charge (CTC) to Granite State Electric Company should have any impact on our decision regarding the PCRRBs. We also discuss the timing of the Company's filing.

In support of its Petition, NEP filed Exhibit NEP-1, containing actual and pro forma balance sheet and income statement as of March 31, 2000 and pro forma adjustments, and Exhibit NEP-2, containing the pre-filed Direct Testimony of Thomas F. Killeen, Senior Financial Advisor, Treasury Services Department, National Grid USA Services Company, Inc. In addition, the Company responded to several sets of data requests from the OCA and Staff, and the Parties and Staff held technical sessions. On August 28, 2000, the Company submitted a response to the Commission regarding information concerning NEP's divestiture and sale of Millstone, and the procedures through which the Commission would review such a sale.

At the Prehearing Conference, Staff questioned the status of other required regulatory approvals. The Company averred that Commission approval, as well as the approval of the Massachusetts Department of Telecommunications and Energy (MDTE), the Connecticut Department of Public Utility Control (CDPUC) and the Vermont Public Service Board (VPSB), must be received by September 28, 2000 or the short-term PCRRBs will be subject to mandatory tender and the Company would lose the ability to issue \$38.5 million tax-exempt debt through the Connecticut Development Authority (CDA), thereby increasing interest costs and the Company's overall cost of capital.

1. Should the issues related to the issuance of the Long Term Debt and long-term PCRRBs be considered separately?

At the Prehearing Conference, Staff suggested that the Long Term Debt and the PCRRB financings be considered separately within this proceeding as they were, essentially, unrelated and the PCRRBs require a Commission Order by September 28, 2000, while the Long Term Debt does not have so immediate a requirement. According to NEP, the inclusion of the two petitions in a single filing was for convenience only. NEP agrees that they are not related and can be considered independently of one another. While the filing may have been convenient for NEP, NEP is advised that, in the future, unrelated requests for financing approvals should be made

separately. For the purposes of this request, we will consider both financings within this docket, but will address each in separate orders. This order will address the proposed issuance of the \$38.5 million of PCRRBs only.

2. Is the issuance of the long-term PCRRBs, and the proposed terms and conditions, consistent with the public good pursuant to RSA 369:1?

In September, 1999 NEP entered into a Loan Agreement with the CDA to support the issuance by the CDA of \$38,500,000 of CDA Pollution Control Revenue Bonds. These bonds were issued to refund the Pollution Control Revenue Bonds originally issued by the CDA in 1985. The Company seeks authority to allow these bonds, which have maturities ending on or before September 28, 2000, to be extended for an additional 15 years until October 15, 2015. The long term bonds would be tax exempt bonds offering NEP the opportunity for significantly reduced interest costs compared to taxable debt, which NEP estimates to be two percentage points, a potential savings in overall interest costs to its customers, and, therefore, a modest benefit to Granite State Electric Company customers in New Hampshire. The bonds would be sold pursuant to the existing remarketing agreement, Loan Agreement and Indenture of Trust for the short term bonds, thereby reducing issuance costs. The interest for the long term bonds could be either fixed or

variable, although the Company is expected to issue variable rate bonds. No matter which interest rate mode is chosen, the rate will be fixed for the interest rate period chosen. According to NEP, variable tax exempt municipal bonds enjoy approximately 200 basis points advantage over fixed rate long term tax exempt issues, and the Company may convert to a fixed rate if future market conditions warrant. The 30-day variable rate for tax exempt commercial paper in July 2000 was approximately 3.75% vs. a long term fixed rate for unsecured bonds of approximately 6.00%. As NEP is unable to anticipate market conditions during the period the bonds will be outstanding, it is requesting that the Commission establish an interest rate ceiling of 8.00% for bonds with a fixed rate and 11.00% for bonds with a variable rate. Both Staff and the Office of Consumer Advocate (OCA) have recommended approval of the Company's Petition with regard to the PCRRBs.

In view of the reduced interest rate these bonds will have over taxable bonds, we find based on Staff's recommendation that the proposed bonds are likely to result in a lower cost of debt and are, therefore, consistent with the public good pursuant to RSA 369:1.

- 3. Did the issuance of short-term PCRRBs in September, 1999 require Commission approval?**

At the Prehearing Conference, Staff questioned whether the original Pollution Control Revenue Bonds were short-term bonds or long-term bonds requiring Commission approval in September, 1999. The Loan Agreement at Section 2.3 provides for a maturity date of October 15, 2015. Section 4.2 of the Loan Agreement provides that all regulatory approvals or waivers from the MDTE, the VPSB, CDPUC and this Commission relating to the incurrence of long term indebtedness must be obtained prior to the business day prior to the one year anniversary of the date of initial issuance of the bonds, i.e. September 28, 2000, or the bonds issued thereunder will be mandatorily retired. NEP avers that the bonds issued under the Loan Agreement to date all have maturity dates of September 28, 2000 or earlier. The debt has been categorized as short term on NEP's balance sheet by its auditors.

There would be no need for a provision for mandatory redemption of the bonds under Section 4.2 of the Loan Agreement if they all expire prior to the last business day before the one year anniversary of the date of initial issuance of the bonds. On the other hand, NEP maintains that no long term bonds have been issued. Therefore, it would appear that NEP has not actually issued and sold bonds payable more than 12 months after issuance

which would have required this Commission's approval pursuant to RSA 369:1. Nevertheless, the Loan Agreement itself does not require that short term bonds be issued initially pending regulatory approval to convert them to long term debt.

Instead, the Loan Agreement appears to contemplate the issuance of long term debt which would be subject to mandatory redemption if regulatory approvals were not subsequently received. While NEP may not have run afoul of the limitations of RSA 369:1 in September, 1999, we find the Loan Agreement could be construed as a long term debt instrument for which NEP should have sought approval before any bonds were to be issued under its terms. As no long term bonds were apparently issued and sold we will take no further action at this time.

4. Will the proposed divestiture of Millstone have any impact on the issuance of the PCRRBs?

On August 7, 2000, the CDPUC announced that NEP, in conjunction with other Millstone owners, had agreed to sell its entitlement to Dominion Resources, Inc. The sale of NEP's interest was conducted pursuant to a settlement agreement between NEP and Northeast Utilities signed on November 29, 1999. Information regarding the settlement agreement was originally provided to the Commission on December 1, 1999 in NEP's "Reconciliation of Contract Termination Charge to Granite State Electric Company". According to NEP's 1999 Financial

Statements (FERC Form-1, p. 123.8) amounts received pursuant to a sale of Millstone will, after reimbursement of the Company's transaction costs and net investment, be credited to customers.

At the Prehearing Conference, the OCA expressed concerns regarding the PCRRBs and their relationship to the sale of Millstone. According to NEP, the undepreciated value of all Millstone capital spending that occurred prior to 1996 was written down in September 1998, therefore, the undepreciated value of the pollution control equipment is now zero. The write down resulted in a credit to the reserve and a debit to a regulatory asset account which is expected to be fully recovered by the end of 2000. While the asset originally associated with these bonds will no longer be on NEP's books, we do not look upon these bonds as an overcapitalization, but rather a source of low cost, tax exempt unsecured debt and the conversion of existing short term debt to long term debt.

The Loan Agreement provides at Section 2.4(C) that the CDA, at its option, may redeem the bonds upon *inter alia*, any disposition of all or any part of NEP's interest in Millstone. According to NEP, the amount of the PCRRBs will not count against any tax-exempt financing "cap" that the CDA may have as it is not a new issuance. The Company avers that it sees no reason why the CDA would redeem the bonds. It would

appear, therefore, that the sale of Millstone will have no impact on the proposed issuance of the PCRRBs as long as the CDA does not seek to redeem the bonds.

5. Does the Contract Termination Charge (CTC) to Granite State Electric Company have any impact on the proposed issuance of the PCRRBs?

NEP believes that the Reconciliation of Contract Termination Charge to Granite State Electric Company, Docket DE 99-192, *New England Power Company*, is the appropriate proceeding in which to review the divestiture and the associated settlement agreement. See *Re Granite State Electric Company*, 83 NH PUC 532, 553-554 (1998). Staff agrees that since the proceeds from the sale of Millstone will flow through the CTC, that would be the appropriate proceeding in which to discuss the divestiture and settlement agreement. We agree that consideration of these issues are properly the subject of Docket DE 99-192. The sale of the proposed PCRRBs should not be delayed because of other issues surrounding the sale of Millstone.

6. Timing of Filing for Regulatory Approvals

NEP indicates that filings for regulatory approval and/or waivers were made with the MDTE on May 24, 2000, with

the CDPUC and this Commission on July 21, 2000², and with the VPSB on July 24, 2000. At the Prehearing Conference, Staff pointed out that, while the PCRRB request could have been filed any time after September, 1999, it was not filed until July 21, 2000. NEP maintains that, due to statutory differences in the various jurisdictions, it requires an unappealable order from this Commission by September 28, 2000, while it only requires orders or waivers from the other jurisdictions. We are concerned that NEP would wait so long to seek authorization here, and couple it with another long term financing request, when it could have filed here at any time after September, 1999, and in fact did file nearly two months earlier in Massachusetts where a later order would not have been problematic. Should this result in NEP's losing this lower cost debt financing, this Commission shall determine whether to impute this lower cost long term debt to NEP in place of higher cost long term debt in any appropriate future proceeding.

On August 30, 2000, the CDPUC issued an order in its Docket No. 00-07-24, waiving the requirements of Conn. Gen. Stat. 16-43, as the MDTE is exercising its jurisdiction over

the proposed financing, and ordering NEP to file with the CDPUC any decisions issued by the MDTE relating to the proposed financing. On August 31, 2000, the VPSB issued an order in its Docket No. 6406, also approving NEP's petition. No decision has yet been received from the MDTE.

Based upon the foregoing, it is hereby

ORDERED, that the request of New England Power Company for authorization to issue \$38,500,000 of Pollution Control Revenue Refunding Bonds is hereby approved subject to NEP's receipt of an order from the MDTE, similarly approving the issuance, no later than September 28, 2000; and it is

FURTHER ORDERED, that New England Power Company shall file a copy of the order from the MDTE with this Commission within ten days of its issuance; and it is

FURTHER ORDERED, that New England Power Company is hereby authorized to issue and sell \$38,500,000 in long term Pollution Control Revenue Refunding Bonds with a maturity date of October 15, 2015 and an interest rate ceiling of 8.00% for bonds with a fixed rate and 11.00% for bonds with a variable rate; and it is

FURTHER ORDERED, that NEP shall advise the Commission of the details of the financing following the issuance of any obligations; and it is

FURTHER ORDERED, that on or about January first and July first in each year, New England Power Company shall file with the Commission a detailed statement, duly sworn by its Treasurer or Assistant Treasurer, showing the disposition of the proceeds of said securities, until the expenditure of the whole of said proceeds shall have been fully accounted for.

By order of the Public Utilities Commission of New Hampshire this twenty-fifth day of September, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary